IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.2232 OF 2007
IN
SUIT NO.1640 OF 2007
WITH
SUIT NO.1640 OF 2007

Charak Pharmaceuticals & Ors. ...Plaintiffs.
Versus
Charak Jupiter Pharmaceuticals. ...Defendant.

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Mr. Sal Andhyarujina with Mr. Vishal Maheshwari i/b. M/s.Khaitan & Co. for the Plaintiffs.
Mr. Vilas B. Tapkir for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 19, 2007.

P.C.:

At the hearing of the Notice of Motion, on the request of Learned Counsel appearing on behalf of the Plaintiffs and the Defendant, the suit has been taken on Board and has been called out, since parties desire the Court to record an agreed statement that would dispose of the suit.

The suit is for an injunction restraining the Defendant from using the trade name “Charak Jupiter Pharmaceuticals” and/or any other mark which is identical with and/or similar in whatsoever manner and/or similar to the Plaintiffs' trade name “Charak Pharmaceuticals”. The Plaintiffs claim to be the registered proprietors of the mark “charak” which has been used in Ayurvedic Pharmaceutical products since 1949. A Notice of Motion was taken out and in reply thereto, the Defendant filed an affidavit stating that he has never used the trade name “Charak Jupiter Pharmaceuticals”, nor did he intend to do so due to want of financial capacity. The Defendant has also stated that though he had applied for registration of the mark “Charak Jupiter Pharmaceuticals”, his Advocate had moved the Trade Mark Registry for withdrawing the application for registration by a letter dated 13th September 2005. According to the Defendant, the publication of the application in the Trade Mark Journal was an inadvertent error. The Defendant has stated that no business is being conducted at all in the name of Charak Jupiter Pharmaceuticals.

Learned Counsel appearing on behalf of the Defendant has, on the instructions of the Defendant, stated before the Court that in the circumstances, the Defendant would submit to a decree on admission in terms of prayer clause (a). There shall be a decree accordingly in terms of prayer clause (a). Learned Counsel appearing for the Plaintiffs has sought instructions and stated that the claim for damages in terms of prayer clause (b) is not pressed. The suit shall accordingly stand decreed.

In view of the disposal of the suit, the Notice of Motion does not survive and the same is accordingly disposed of.

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